

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 A.J., et al.,

11 Plaintiffs,

12 v.

13 CITY OF BELLINGHAM, et al.,

14 Defendants.

CASE NO. C16-0620-JCC

ORDER

15 This matter comes before the Court on the motion to strike by Defendants City of
16 Bellingham and Officer Zachary Serad (“the Bellingham Defendants”) (Dkt. No. 62). The
17 Bellingham Defendants ask the Court to strike Plaintiffs’ fourth amended complaint (Dkt. No.
18 59) to the extent it exceeds the Court’s order granting leave to amend (Dkt. No. 57).

19 Plaintiffs requested leave to amend their complaint “to add the U.S. Border Patrol
20 (CBP/DHS), Border Patrol Agent R. Chavez, Border Patrol Agent Doe 501, and Deputy Border
21 Patrol Agent Chris Bippley under a *Bivens*[¹] theory and two accompanying *Bivens* causes of
22 action.” (Dkt. No. 55 at 1-2.) The motion for leave stated that the amendment “will not affect any
23 of the present parties and involves minimal additional facts, adding only names of the known
24 responsible Border Patrol personnel.” (*Id.* at 2.) In granting leave to amend, the Court

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26 ¹ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388
(1971).

1 specifically noted that Plaintiffs sought “to amend their complaint to add additional defendants.”
2 (Dkt. No. 57 at 1.) Plaintiffs submitted their amended complaint shortly thereafter. (Dkt. No. 59.)

3 The Bellingham Defendants assert that the amended complaint exceeds the scope of the
4 motion to amend and the Court’s order granting leave by raising new claims and making new
5 factual allegations against the City of Bellingham and Officer Serad. (Dkt. No. 62 at 1-2.) The
6 Bellingham Defendants seek to strike these portions of the complaint. (*Id.*)

7 Regarding the new claims, the Court agrees that the amended complaint went beyond its
8 permissible scope. After summary judgment, the only claims left against the Bellingham
9 Defendants were Plaintiff A.J.’s Washington Law Against Discrimination (WLAD) claims. (Dkt.
10 No. 54 at 13-14.) The Court did not grant Plaintiffs leave to amend their complaint to allege new
11 claims against the Bellingham Defendants, but that is what they did. For example, the amended
12 complaint alleges a *Bivens* cause of action not only against the new Border Patrol Defendants,
13 but also against Officer Serad. (Dkt. No. 59 at 22.) The complaint also alleges a WLAD claim on
14 behalf of all Plaintiffs, (*id.* at 26-27), even though the Court’s summary judgment order
15 explicitly stated that “the WLAD claims by Antonio J. and Luciana Zeferino must be
16 DISMISSED” because “[o]nly the person injured by an alleged discrimination may bring a claim
17 under the statute.” (Dkt. No. 54 at 11.) And, the complaint alleges a new outrage claim against
18 “All Defendants.” (Dkt. No. 59 at 27.) These are impermissible attempts to expand the claims
19 against the Bellingham Defendants and they shall be stricken.

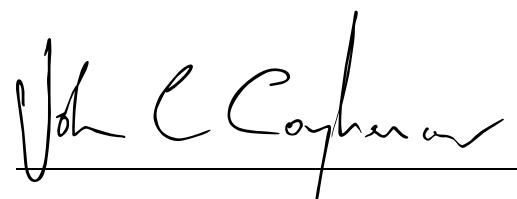
20 As for the new factual allegations, they generally relate to the WLAD claims that remain
21 against the Bellingham Defendants. (*See* Dkt. No. 59 at 7-12.) Moreover, the allegations largely
22 track the traffic stop video, which this Court has reviewed and discussed at length in its summary
23 judgment order. (*See* Dkt. No. 54 at 1-5.) Thus, although the Court did not explicitly permit
24 Plaintiffs to amend their statement of facts, the Court perceives no harm to the Bellingham
25 Defendants from this amendment.

26 In sum, the motion to strike (Dkt. No. 62) is GRANTED in part and DENIED in part.

1 The motion is GRANTED as to the new claims asserted against the Bellingham Defendants and
2 the WLAD claims asserted by Plaintiffs Antonio J. and Luciana Zeferino. The motion is
3 DENIED as to the amended factual allegations.

4 DATED this 27th day of January 2017.

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John C. Coughenour

UNITED STATES DISTRICT JUDGE